

**DATE:** March 27, 2008

**TO:** Arne Simonsen, Chair  
Members of the Delta Protection Commission

**FROM:** Linda Fiack, Executive Director

**SUBJECT:** Consideration of Revised Old Sugar Mill Specific Plan (OSMSP) and Related Documents Approved by the Yolo County Board of Supervisors (Yolo County) on March 11, 2008 and Submitted to the Delta Protection Commission (Commission) for Reconsideration.

**RECOMMENDED ACTIONS**

- A. Receive and consider information provided by Commission staff relative to:
- (1) Actions taken by Yolo County on March 11, 2008 to approve the OSMSP ([Attachment A](#));
  - (2) Policies of the Commission's Land Use and Resource Management Plan for the Primary Zone of the Delta (Management Plan) adopted February 23, 1995 pursuant to the Delta Protection Act (Act);
  - (3) Analysis and findings adopted by the Commission on February 22, 2007 concerning appeals filed on November 3, 2006 ([on file with the Commission](#)) by the Natural Resources Defense Council (NRDC), and the Concerned Citizens of Clarksburg, et al on the OSMSP approved by Yolo County on October 24, 2006 ([Attachment B](#));
  - (4) Hearing held by the Commission on January 25, 2007 on the appeals of actions taken by Yolo County on October 24, 2006 ([Attachment C](#)); and
  - (5) Actions taken by the Commission on November 16, 2006 as to its jurisdiction over the matter ([Attachment D](#)).
- B. Conduct a public hearing (including testimony from Yolo County, project applicant, appellants, and the general public) regarding the OSMSP approved by Yolo County on March 11, 2008 and submitted to the Commission on March 11, 2008 for reconsideration as to consistency or inconsistency with the policies of the Commission's Management Plan, particularly Land Use Policies 3 and 4 and Levees Policy 3 (subject of remand of OSMSP to County by Commission on February 22, 2007).
- C. Receive Commission staff's recommended Findings and Analysis that the revised OSMSP approved by Yolo County on March 11, 2008 is not consistent with Land Use Policy 3, Land Use Policy 4, and Levees Policy 3 of the Management Plan.
- D. Receive Commission Member input and comments relative to consistency or inconsistency of the revised OSMSP approved by Yolo County on March 11, 2008 with

the policies of the Management Plan, particularly Land Use Policies 3 and 4, and Levees Policy 3.

- E. (1) Adopt Findings and Analysis that the OSMSP approved by Yolo County on March 11, 2008 is “not” consistent with Land Use Policy 3, Land Use Policy 4, and Levees Policy 3; or (2) direct staff to return with amended Findings and Analysis reflecting discussion at the hearing for consideration at a subsequent meeting of the Commission noting that May 22, 2008 is the next regularly scheduled meeting of the Commission (April 24, 2008 is an adopted alternate meeting date).

### **RECOMMENDED MOTION**

“I hereby move that the Commission adopt the Findings and Analysis set forth in the March 27, 2008 staff report concerning the OSMSP adopted by Yolo County on March 11, 2008.”

### **REASON FOR RECOMMENDED ACTIONS**

The recommended actions would assure the Commission’s compliance with its regulations and the Act by fulfilling its role as an appeal body when an action taken by a local entity on a development project in the Primary Zone of the Delta is appealed to the Commission.

### **BACKGROUND**

On October 24, 2006, Yolo County approved the OSMSP ([Attachment E](#)). Subsequently, the actions taken by Yolo County were appealed to the Commission by the Concerned Citizens of Clarksburg and Earth Justice (on behalf of NRDC) on November 3, 2006.

On November 16, 2006 the Commission determined that it has jurisdiction over the OSMSP because (1) it is located in the Primary Zone of the Delta, (2) it constitutes development, and (3) the filed appeals contain appealable issues (see Attachment D).

On January 25, 2007 the Commission:

- (1) Received information relative to: the OSMSP approved by Yolo County on October 24, 2006; appeals filed by the Concerned Citizens of Clarksburg and Earth Justice (NRDC); and policies of the Commission’s Management Plan;
- (2) Conducted a public hearing relative to consistency/inconsistency of the OSMSP approved by Yolo County on October 24, 2006 with the policies of the Management Plan cited in the Appeals;
- (3) Received Commission Member input and comments relative to consistency/inconsistency of the OSMSP with the policies of the Management Plan;
- (4) Considered staff’s recommended determination as to consistency or inconsistency of the OSMSP approved by Yolo County on October 24, 2006 with Agriculture Policy 4, Land Use Policies 2, 3, 4 and 7, Utilities and Infrastructure Policy 3, Levees Policies 1, 2, 3, 4 and 5 and concluded inconsistency with Land Use Policies 3 and 4, and Levees Policy 3; and
- (5) Directed staff to return to the Commission on February 22, 2007 with recommended Findings for adoption as to consistency (Agriculture Policy 4, Land Use Policies 2 and 7, Utilities and Infrastructure Policy 3, and Levees Policies 1, 2, 4 and 5) or inconsistency (Land Use Policies 3 and 4, and Levees Policy 3) of the OSMSP approved by Yolo

County on October 24, 2006 with the policies of the Management Plan cited in the Appeals pursuant to actions taken by the Commission.

On February 22, 2007 the Commission adopted Findings and Analysis setting forth that the OSMSP approved by Yolo County on October 24, 2006 is: (1) Consistent with Agriculture Policy 4, Land Use Policies 2 and 7, Utilities and Infrastructure Policy 3, and Levees Policies 1, 2, 4 and 5; and (2) Not consistent with Land Use Policies 3 and 4, and Levees Policy 3 which resulted in Commission action to remand the matter to Yolo County for reconsideration.

Subsequent to the remand of the project the applicant requested consideration of a revised OSMSP by Yolo County. On March 11, 2008, Yolo County took actions to approve the OSMSP described in the attached County staff report (see Attachment A) and requested, on March 11, 2008 that the Commission reconsider the OSMSP (approved by Yolo County on March 11, 2008) as to consistency with the Commission's Management Plan, particularly Land Use Policies 3 and 4, and Levees Policy 3.

Therefore, the Commission is receiving information from staff about the revised OSMSP approved by Yolo County on March 11, 2008, conducting a public hearing on the matter, discussing input from Commission Members, and receiving recommended Findings and Analysis that the project is inconsistent with Land Use Policies 3 and 4, and Levees Policy 3 for consideration and, if determined to be appropriate, adopting the recommended staff Findings and Analysis as presented or amended pursuant to Commission Member discussion during the hearing. The Commission may also elect to direct staff to return with amended Findings and Analysis at a subsequent meeting of the Commission for final action.

## **FINDINGS AND ANALYSIS**

The three policies of the Management Plan that the Commission found the OSMSP (approved by County on October 24, 2006) to be inconsistent with are provided below along with: (1) the basis of Finding of Inconsistency on February 22, 2007; (2) revisions to the OSMSP as provided in Yolo County's staff report as the basis for County approval on March 11, 2008; (3) Commission staff's recommended Findings of "Inconsistency" of the OSMSP (approved by County on March 11, 2008) with the three noted policies; and (4) the basis for the Findings recommended by staff for Commission consideration.

**Land Use Policy 3:** New residential, recreational, commercial, or industrial development shall ensure that appropriate buffer areas are provided by those proposing new development to prevent conflicts between any proposed use and existing agricultural use. Buffers shall adequately protect integrity of land for existing and future agricultural uses. Buffers may include berms and vegetation, as well as setbacks of 500 to 1,000 feet. (Cal. Code Regs., tit. 14, sec. 20060, subd.(c).)

### **Finding of Inconsistency Adopted by Commission on February 22, 2007:**

The proposed buffer between agricultural and urban uses provided in the OSMSP would not provide separation equivalent to or beyond that recommended in Policy 3 and thus would not satisfactorily meet the purposes for which such buffers are called for in that Policy.

Basis of Finding Adopted on February 22, 2007:

The 300-foot buffer provided in the OSMSP to separate the development component of the proposal and agricultural operations on adjacent parcels is significantly less than the 500-foot to 1,000-foot buffer recommended in the Management Plan. It should be noted that the 300-foot buffer is from the first row of vines to the nearest occupied building that is a part of the project.

Pursuant to testimony of the Yolo County Agricultural Commissioner, the 300-foot buffer was found to be adequate by Yolo County based on facts associated with vineyard operations (current agricultural use of the adjacent parcel). However, Policy 3 states that buffers shall adequately protect integrity of land not only for existing but future agricultural uses. There is no certainty that wine grapes will continue to be planted on the adjoining parcel. In that the 300-foot buffer is based on farming practices associated with vineyard operations, including ground rather than aerial spraying, it does not provide assurance that such separation would be sufficient or satisfactory for farming practices that could be conducted on the parcel in the future and that could include aerial spraying. A new crop may require a larger buffer. Policy 3 clearly requires an adequate buffer to allow future agricultural uses unfettered by ag/urban conflicts.

Moreover, although presented as a 300-foot buffer in the OSMSP, in reality, the separation between the project area and the adjacent agricultural parcel is significantly less as 75 feet of the buffer is on the agricultural parcel for which the buffer is to be provided. To the extent that the 75-foot buffer on the agricultural parcel would prevent the use of any portion of that parcel for agricultural uses, it is not consistent with Policy 3 requirements that land be protected “for existing and future agricultural uses.” No portion of the agricultural parcel subject to the buffer would be available for future agricultural use.

Revisions in OSMSP (referenced in County staff report) as approved by County on March 11, 2008:

The 300-foot agricultural buffer between new construction within the OSMSP and the adjoining vineyard to the west had previously started at the first row of existing vines. The applicant has redefined, and Yolo County has approved, the buffer to begin at the western edge of the right-of-way for Willow Avenue, thus extending it 15-25 feet further into the OSMSP project site. In addition, concurrent with the construction of new buildings on Parcels 4 and 5 (not the initial phase of development or time specific), the applicant will provide a berm and a double row of accompanying vegetation (such as olive trees), to create a 20-foot high hedgerow that will further enhance the buffer.

Finding Recommended for Commission Adoption on March 27, 2008: NOT CONSISTENT.

The proposed buffer between existing and “future” agricultural uses and urban uses provided in the revised OSMSP approved by Yolo County on March 11, 2008 does not provide separation of existing and future agricultural uses with urban uses equivalent to or beyond that recommended in Land Use Policy 3 and thus would not satisfactorily meet the purposes for which such buffers are called for in that Policy. The revised OSMSP approved by Yolo County on March 11, 2008 is, therefore, inconsistent with Land Use Policy 3.

Basis for Recommended Finding of Inconsistency:

While the boundary of the buffer has been redefined to begin at the western edge of the right-of-way of Willow Avenue (a County road) rather than at the first row of existing vines (providing an additional 15-25 feet of buffer) and the inclusion of a 20-foot high hedgerow within the buffer, the area of separation between the development component of the proposal and agricultural operations (existing and unknown future) on the adjacent parcels remains to be significantly less than the 500-foot to 1,000-foot buffer called for in Land Use Policy 3.

While the testimony of the Yolo County Agricultural Commissioner (Commissioner) during the January 25, 2007 hearing conducted by the Commission indicated that the 300-foot buffer (now proposed to be extended by 15-25 feet) was found to be adequate by Yolo County based on facts associated with vineyard operations (including ground rather than aerial spraying), there is no certainty that wine grapes will continue to be planted on the adjoining parcel.

The Commissioner has included in a statement submitted to the Board of Supervisors on March 11, 2008 (see Attachment A) that buffer width cannot be applied across the board but rather is dependent on variables that include crop types, use of regulated substances, roads and other existing buffers, and proximity of sensitive receptors. In each of these areas, vineyard management is the agricultural use referenced as to the appropriateness of the revised buffer area. Evidence concerning the permanency of the vineyard on the property is mainly based on the “intentions” of the current owner. The owner’s intentions, however, can change. In addition, the property can always be sold or otherwise conveyed to new owners who may prefer to plant a different crop.

Thus, it has not been demonstrated that the addition of 15-25 feet of buffer would be adequate for separating existing urban uses with potentially future agricultural uses that may require practices not routinely associated with vineyard management, including aerial spraying.

Therefore, the redefined buffer in the OSMSP approved by Yolo County on March 11, 2008 does not provide adequate supportive facts to warrant changing the Commission’s Finding of Inconsistency adopted on February 22, 2007 to a Finding of Consistency with Land Use Policy 3 which clearly requires an adequate buffer to allow existing and “future” agricultural uses unfettered by ag/urban conflicts.

**Land Use Policy 4:** New non-agricultural residential development, if needed, shall be located within the existing Primary Zone communities where support infrastructure and flood protection are already provided. (Cal. Code Regs., tit. 14, sec. 20060, subd.(d).)

Finding of Inconsistency Adopted by Commission on February 22, 2007:

The project involves new non-agricultural residential development in an area that has not been substantially documented with evidence of having support infrastructure and flood protection in place for such use.

Basis of Finding Adopted on February 22, 2007:

The inconsistency with Land Use Policy 4 is reinforced by reading that Policy along with Public Resources Code section 29765 which lists findings that local governments were required to make prior to the Commission's approval of local government general plan amendments under the Act. Although the section's provisions are not literally applicable, as the Commission has approved Yolo County's amendments, they show legislative intent as to what the Resource Management Plan should achieve, and therefore provide assistance in understanding that Plan's provisions. One finding required under section 29765 is "(f). The development will not expose the public to increased flood hazards."

The OSMSP (approved by Yolo County on October 24, 2006) proposed to convert land zoned Heavy Industrial to a mixed use that included up to 162 residences. These residences may be constructed even though levee improvements that may be required to provide adequate flood protection may not occur due to economic infeasibility. The project proponent is only required to perform improvements pursuant to the outcome of required studies. However, if the outcome of such studies requires improvements that are economically infeasible there are no assurances that the project proponent or any other entity would perform the needed improvements.

Flood protection for the project area is uncertain and may be below a 100-year level based on the following information: flood protection for the project area is provided by levees on the Sacramento River and Elk Slough; in 1990, the Clarksburg levees were certified and the area was designated as Zone B (commonly referred to as an area having 100-year flood protection) under FEMA Flood Insurance Risk Maps; a re-evaluation conducted after the 1997 flood determined the 100-year flood to be larger than the flood upon which the 1990 determination was based; and the criteria for levee stability and seepage has become more stringent since 1990.

Allowing up to 162 residences to be built within the project area prior to the re-certification of the levees for 100-year protection reduces the level of public health and safety in the area by increasing the number of people at risk of flooding and is inconsistent with Land Use Policy 4.

"Known" uncertainties should be taken into consideration relative to applicability over the life of the project. Although the project is located in an existing community, the adequacy of the flood protection for the community is in a state of uncertainty, ie., FEMA remapping initiative (levee documentation review/decertification of undocumented levees) and FEMA/Corps of Engineers Standards review; DWR mapping initiative (AB 142) and levee coring initiative (Propositions 1E/84); and pending flood protection legislation (SB 5, SB 6, SB 17, SB 59, AB 5, AB 236, AB 4, AB 70 and numerous spot bills).

Finally, there is insufficient evidence that 162 new residences in Clarksburg are needed. This number of units would more than double the size of Clarksburg. According to the August 2004 Draft Environmental Impact Report for this project, Clarksburg had 132 housing units as of 2001. (Draft OSMSP Program Environmental Impact Report, August 2004, p. 4.10-6). Significantly, according to that report, "the General Plan Housing Element predicts that an additional 27 housing units will be needed to house an additional 68 people by the year 2020." (Ibid.)

Revisions in OSMSP (referenced in County staff report) as approved by County on March 11, 2008:

The number of residential units approved by Yolo County on March 11, 2008 has been reduced from 162 (approved on October 24, 2006) to 123. While the number of cluster and cottage homes remains approximately the same, the number of single-family units has been decreased. Yolo County has indicated that the resulting neighborhood will be developed with a similar number of units per acre as more traditional areas within historic Clarksburg.

While the October 24, 2006 approval by Yolo County required homes to be elevated a maximum of five feet, the revised OSMSP approved by Yolo County on March 11, 2008 provides for home to be elevated one foot above the base flood elevation “at the time that building permits are issued.” The new base flood elevation will either be derived from new FEMA maps, if available at the time of building permit applications, or will be based on an engineering study performed in accordance with Yolo County’s Flood Damage Prevention Ordinance and a related mitigation measure. Yolo County has indicated that it is “likely” that living areas in all residential units would be elevated an estimated 8 to 11 feet, with storage area located on the first floor. It is the “intent” of Yolo County to consult with all appropriate state and federal agencies to ensure that the best available information is used in determining the base flood elevation.

The approval of the revised OSMSP reduces the period required for the developer to maintain flood insurance on individual private homes within the OSMSP from four years to two years for market rate homes and from ten years to five years for affordable homes.

Finding Recommended for Commission Adoption on March 27, 2008: NOT CONSISTENT. The OSMSP, as revised, includes new non-agricultural residential development in an area that has not been substantially documented with evidence of having support “infrastructure” and flood protection in place for such use. As such, the revised OSMSP approved by Yolo County on March 11, 2008 is not consistent with Land Use Policy 4.

Basis for recommended Finding of Inconsistency:

While the number of homes has been reduced in the revised OSMSP, there remains to be insufficient evidence that even the reduced number of 123 residential units is “needed.” As presented during the February 22, 2007 hearing conducted by the Commission and cited in the August 2004 Draft Environmental Impact Report for the OSMSP approved by Yolo County on October 24, 2006, Yolo County’s General Plan Housing Element predicts that an additional 27 housing units will be “needed” to house an additional 68 people by the year 2020. Land Use Policy 4 clearly shows the relevance of the “need” for housing to be demonstrated in order for there to be consistency with the Policy.

It continues to be a fact related to the revised OSMSP, as was the case with the OSMSP approved by Yolo County on October 24, 2006, that residences, albeit fewer, may be constructed even though levee (infrastructure) improvements that may be required to provide adequate flood protection may not occur due to infeasibility (from the perspective of the Yolo County Board of Supervisors). While it is implied that the applicant “may” be required to perform improvements

pursuant to the outcome of required studies, in reality, if the outcome of such studies requires improvements that are determined to be infeasible by Yolo County there are no assurances that the needed improvements to infrastructure would actually be completed.

It should be noted that the fact that Yolo County's approval of the revised OSMSP includes requirements for the construction of residences to be elevated is an acknowledgement of potential flood risks of development in a flood prone area. It is also worth noting that requirements on the developer to pay for flood insurance have been reduced from that required in the October 24, 2006 County approval to the March 11, 2008 approval.

Moreover, it is known from sources that include the California Department of Water Resources, U. S. Army Corps of Engineers, and the California Central Valley Flood Protection Board, as well as the passage of legislation that includes Senate Bill 5 (Machado – Flood Management) and Assembly Bill 5 (Wolk – Flood Management) that the uncertainties referenced at the February 22, 2007 hearing conducted by the Commission, including in the staff report to the Commission, related to potential flood hazard impacts to public health and safety along the Sacramento River, including at Clarksburg, remain to be of concern and under study.

The anticipated FEMA decertification of the levees at the project site, which Commission staff learned about from staff of the Department of Water Resources, clearly demonstrates that increased development without first addressing the lack of levee integrity has significant potential to put public health and safety at risk.

As relates to this known uncertainty relative to flood hazard and the potential threat to public health and safety in flood prone areas the revised OSMSP does not address infrastructure inadequacy, overtopping (flood stage), under seepage, or influences such as climate change and sea level rise.<sup>1</sup>

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<sup>1</sup> Yolo County appears to assert that a trial court ruling, issued subsequent to the Commission's remand of this matter to the County, calls into question the use of global warming concerns in evaluating flood risks of the OSMSP. (See p. 13 of the findings attached to the County's March 11, 2008, resubmission of this matter to the Commission.) Specifically, the County cites an April 30, 2007, decision issued by the Sacramento County Superior Court in *Natural Resources Defense Council v. Reclamation Board*. (Because the case settled, the decision never became an official judgment.) That case included the question of whether, under the California Environmental Quality Act (CEQA), new global warming information required the Reclamation Board to revise a particular environmental impact report. The trial court concluded that the Reclamation Board could use the report because it already took climate change into account. The trial court found that, given the deference the court was required to give the Board, NRDC failed to meet its high burden of proving that new global warming information was sufficient to require additional environmental review. The court did not conclude that climate change should be excluded from consideration in evaluating a project's environmental impacts. It emphasized that "[t]his ruling is a narrow one, and is not a ruling that the effects of potential changes in climate are not a proper subject for consideration under CEQA."

A copy of the written tentative decision in that case, which was not subsequently altered, will be included in the administrative record.



Examples of seepage from the water side of the levees in the Delta to the landside of the levees are found throughout the Delta. Earlier this month, Commission staff viewed 2 deep sink holes on Grand Island with water flowing. They were located hundreds of feet from the landside of the levee, and we were informed that they have been there for years. In another example observed by Commission staff, there was water flowing in a deep farm ditch before the irrigation season started. The ditch was parallel to and approximately 400 feet away from the levee. In a third example, a large swath of cattails (which are wetland plants) were observed by staff in a farm field hundreds of feet behind the levee along Steamboat Slough. All of these are examples of river water seeping through or under Delta levees.

Finally, the Environmental Impact Report Addendum for the revised OSMSP, certified by the Yolo County Board of Supervisors on March 11, 2008, finds that the project will expose people and structures to potentially significant and unavoidable risk from flooding. Specifically, it describes “Impact 4.7.7” as follows:

Levee Failure—Implementation of the project may expose people and new structures to a significant risk of loss, injury, or death from deep flooding as a result of a potential levee failure. This impact is potentially significant and unavoidable.

(Old Sugar Mill Specific Plan EIR Addendum, p. 16 [citing previously identified impacts in the OSMSP Final EIR].)

The Addendum goes on to describe the new elevation requirement for residential units, and then concludes:

Despite the foregoing, uncertainty continues to surround the issue of levee stability and related flood risks. Accordingly, while the revisions to Mitigation Measure 4.7.7a increase the safety of future Project structures and residents, the County conservatively continues to consider this impact significant and unavoidable.

(Old Sugar Mill Specific Plan EIR Addendum, p. 19.)

The Addendum also concludes that another “potentially significant” impact of the project is its “potential for adverse effect . . . on the adjacent levees.”<sup>2</sup> (Old Sugar Mill Specific Plan EIR Addendum, p. 16 [citing previously identified impacts in the OSMSP Final EIR].) It goes on to state that “certain changes . . . provide further assurance that any geotechnical evaluation” will be adequate, but it does not withdraw the “potentially significant” impacts conclusion. (Old Sugar Mill Specific Plan EIR Addendum, p. 20.)

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<sup>2</sup> The full statement is as follows:

Impact 4.7.8 Levee Encroachment—Implementation of the project may impede or preclude the ability to properly maintain and improve the levees, and may impede or preclude the ability to respond in a flood emergency. The potential for adverse effect from the project on the adjacent levees is potentially significant.

In summary, the changes in the revised OSMSP approved by Yolo County on March 11, 2008 as providing consistency with Land Use Policy 4, do not adequately demonstrate that the housing is “needed” or that there will be sufficient improvements to “infrastructure” to adequately provide flood protection assurance for public health and safety as is required in order to provide consistency with Policy 4.

**Levees Policy 3:** Through flood ordinances based on Flood Emergency Management Act model ordinances, developed by the International Conference of Building Officials and included in the Uniform Building Code, local governments shall carefully and prudently carry out their responsibilities to regulate new construction within flood hazard areas to protect public health, safety, and welfare. Increased flood protection shall not result in densities beyond those allowed under zoning and general plan designations in place on January 1, 1992 for lands in the Primary Zone. (Cal. Ode Regs., tit. 14, sec. 20100, subd.(c).)

**Finding of Inconsistency Adopted by Commission on February 22, 2007:**

The OSMSP includes a change in zoning from Heavy Industrial to a mixed use that includes 27% of the land being used for moderately high density residential development. By increasing the amount of land zoned residential and placing an intense residential development on it, the project supports an increase in density and a decrease in the level of public safety in the area.

**Basis of Finding Adopted by Commission on February 22, 2007:**

This policy should be interpreted consistent with Public Resources Code sections 29763.5 and 29765. Although those sections are not literally applicable, the first lists findings that the Commission must make before determining that proposed general plan amendments are consistent with the Act, and they express legislative intent as to the purposes of the Act, the Management Plan and conforming local general plan provisions. One of the findings required by section 29763.5 is as follows: “(g) The general plan, and any development approved or proposed that is consistent with the general plan, will not expose the public to increased flood hazard.” Similarly, section 29765 lists findings that a local government must make where the Commission has adopted its Management Plan or amendments to that Plan, but (1) a local government has not yet, pursuant to section 29763, submitted to the Commission general plan amendments that would bring their plans into conformity with the Commission’s Plan or (2) a local government has submitted those amendments to the Commission, but the Commission has not approved the amendments. (The Commission adopted its Management Plan on February 23, 1995. It has only adopted one amendment; that amendment became operative on February 27, 1997.) Section 29765 findings include the following: “(f) The development will not expose the public to increased flood hazards.”

The OSMSP, approved by Yolo County on October 24, 2006, includes a change in zoning from Heavy Industrial to a residential use that would result in a density significantly greater than the existing community and greater than the standard density for Yolo County for this type of area, thus reducing the level of public health and safety by inducing growth in the area. Allowing up to 162 residences to be built within the project area prior to re-certification of the levee for 100-year flood protection reduces the level of public health and safety in the area by increasing the number of people at risk of flooding and is inconsistent with Levees Policy 3.

Yolo County has nevertheless asserted that the term “densities” should apply to all uses, not just residential uses. It further asserted, in essence, that the Old Sugar Mill site was zoned for industrial uses on January 1, 1992, and that those uses were dense. The term “densities,” however, is best read as applying to residential uses. The general plan for Clarksburg that was in place on January 1, 1992, for example, refers to densities as residential units per acre. (See Clarksburg General Plan adopted by the Yolo County Board of Supervisors on August 24, 1982, p.5; see also Table 1, p. 1 of that Plan, referring to “Low Density Residential” and “Residential High Density.”). In contrast, that plan does not use the term densities in discussing uses of industrial areas. Rather, in describing industrial uses, it refers to the intensity of uses by classifying zones as either “Light Industrial” or “Heavy Industrial.” The Management Plan, however, only applies to “density,” not “intensity.” (Unlike the Management Plan, the Act’s definition of “development” includes both terms, indicating that they are different. Public Resources Code section 29723’s definition provides that development means, among other things, “change in the density or intensity of use of land.”).

Finally, this project allows residential development in an area prone to floods (see Basis of Finding for Land Use Policy 4). A large number of residential units would expose the public to greater dangers from floods compared to the exposure of industrial workers. While industrial workers would be at the site for limited periods of time, would likely be able to quickly spread the word about imminent danger, and would be, for the most part, mobile, those residing in the proposed residential units would be less likely to receive timely notice of sudden events and would have limited mobility. For example, inhabitants would be exposed to flooding while they are sleeping, and therefore would be less likely to learn about imminent danger. Residential inhabitants would not only have to escape themselves, they would also have material items and family members for which they would be held responsible for evacuating, in addition to simply themselves. Thus, the change in zoning would result in a density increase in both number and nature.

There is substantial evidence that the project may require increased flood protection. For example, Yolo County’s Deputy County Counsel explains that the project “includes preparation of a geotechnical study and, if appropriate, a Flood Protection Plan and the implementation of feasible mitigation.” Uncertainties (see Basis of Finding for Land Use Policy 4), together with increasing recognition of the potential influence and impact of natural occurrences such as climate change and earthquake events, elevate the acknowledgement of flood risks to be taken into consideration in the preparation of such a Plan. The significance of providing assurances for public health and safety while not increasing human exposure to such impacts through projects that increase densities through changes in the zoning has become increasingly important and projects that promote such change in densities, such as the OSMSP, are therefore inconsistent with Levees Policy 3.

Revisions to OSMSP (reference in County staff report) as approved by County on March 11, 2008:

See revisions cited for Land Use Policy 4 (above).

Finding Recommended for Commission Adoption on March 27, 2008: NOT CONSISTENT.

The revised OSMSP includes a change in zoning to allow for an increase in the amount of land zoned residential, and placing an intense residential development on it, which promotes an increase in density and a decrease in the level of public safety in the area which is not consistent with Levees Policy 3.

Basis for Recommended Finding of Inconsistency:

While the revised OSMSP contains measures to potentially attempt to mitigate impacts to public health and safety, particularly from likely flood occurrences, it does not impose requirements on the applicant if such requirements are determined to be infeasible, economically or otherwise by the Yolo County Board of Supervisors.

In addition to the obvious potential risks to public health and safety brought about by increasing the number of residents in a flood prone area (from overtopping, seepage or otherwise), the associated impediments to emergency evacuation becomes challenging as existing infrastructure has not been enhanced to facilitate such increased demand. Risks to public health and safety also have the potential to occur from flooding impacts to structure-related amenities such as utility facilities (including electrical, gas and water) which become exasperated with increased density.

For these reasons, together with those cited under Basis for Recommended Finding of Inconsistency for Land Use Policy 4, the revised OSMSP as approved by Yolo County on March 11, 2008 remains to be Inconsistent with Levees Policy 3.

In conclusion, Commission staff is recommending that the Commission find that the revised OSMSP approved by Yolo County on March 11, 2008 is inconsistent with Land Use Policies 3 and 4, and Levees Policy 3.

**Attachments:**

- A. March 11, 2008 County staff report (on file with Commission).
- B. February 22, 2007 Commission staff report and minutes (on file with Commission).
- C. January 25, 2007 Commission staff report and minutes (on file with Commission).
- D. November 7, 2006 Commission determination and minutes (on file with Commission).
- E. October 24, 2006 County staff report (on file with Commission).